

May 21, 2014

ATTN: Northern Region, objection reviewing officer

Below you will find my objection to the EA and draft DN for the Barnyard South Sheep project project.

Required 36 CFR § 218.8(d) Objection Information

Proposed Project Name: Barnyard South Sheep project

Name and Title of the Responsible Official: Cheryl Probert, Forest Supervisor

Proposed Project will be Implemented on: North Fork Ranger District, Clearwater National Forest



Objection Introduction

This objector submitted his comments on the pre-decisional EA for the proposed Barnyard South Sheep project on September 2, 2014.

Decision Notices are not legal unless they are the result of and linked to a legal EA. A Decision Notice is the direct result of the findings generated by the analysis contained in an EA. Indeed, making a decision based on a flawed, illegal environmental analysis is not what members of Congress had in mind when they promulgated the National Environmental Policy Act over 50 years ago. An illegal EA generates an illegal Decision Notice.

In the objector's comments on the Barnyard pre-decisional EA he identified the following issues and asked Rodriguez to assure the final EA would be modified to

deal with and correct the problems. Unfortunately, Ranger Rodriguez did not make changes between draft and final EA that responded to any of the issues described below.

Please direct Ranger Rodriguez to modify the final EA to remove or correct the illegal sections and issue a new draft DN that responds to the modified EA that complies with United States law.

Objection Point #1---The predicted environmental effects described in Chapter 3 of any NEPA document must be accurate. This is not the case in this EA.

The objector requested the Responsible Official to r Rewrite Chapter 3 to include accurate, professional, complete, honest effects disclosures, or provide unbiased science (not authored by a USDA employee) that supports each disclosure quoted above.

This wasn't done.

Therefore, the EA violates 40 CFR 1500.2(b) because no evidence is presented for environmental effects conclusions, 40 CFR 1501.2(a) because the environmental effects and values are not identified in detail, and without substantiating evidence for effects conclusions the public cannot determine if they are accurate and based on best science which violates 40 CFR 1500.1(b).

The CEQ points out that these new mitigation guidelines are not legally enforceable yet, but the CEQ emphasizes the importance of guideline compliance by stating the "guidance has a distinctly "substantive" focus on the ultimate achievement of mitigation commitments."

The final EIS also violates 40 CFR 1502.24 because the Responsible Official did not identify in a footnote the methodologies and scientific sources relied upon for discussions of effects described in Chapter 3.

This objection point discussion begins on page 3 of the objector's comment letter.

How this objection point can be resolved:

Rewrite Chapter 3 to include an accurate, professional, honest effects analysis to amenity resources and recreation and for each effects prediction identify the basis for (science , monitoring data etc.) the Responsible Official's effects conclusions.



Objection Point #2---The pre-decisional EA indicates there will be clearcut silvicultural prescriptions associated with the selected alternative for the Barnyard South Sheep timber sale. The following required disclosures mandated by NFMA are not included in the pre-decisional EA.

The objector requested the Responsible Official to include the following information in the final EA:

- data and text demonstrating that soil, slope, or other watershed conditions will not be irreversibly damaged by clearcutting,
- a trade off analysis that weighs public acceptance of clearcutting vs. the regeneration success of seed tree and shelterwood prescriptions,
- data, text and maps demonstrating that protection is provided for streams, stream-banks, lakes, wetlands, and other bodies of water from detrimental changes in water temperatures, blockages of water courses, and deposits of sediment,
- data and maps demonstrating that cut blocks, patches, or strips are shaped and blended to the extent practicable with the natural terrain, and
- data and text demonstrating that clearcutting is the optimum silvicultural prescription for the area.

This wasn't done.

Thus, the final EA that violates NFMA Section 6 (E)(i) and (iii) as well as NFMA Section 6 (F)(i).

This objection point discussion begins on page 21 of the objector's comment letter.

How this objection point can be resolved: Rewrite the EA to include the information for clearcuts required by NFMA shown above.



Objection Point #3---The pre-decisional EA indicates there will be seedtree shelterwood silvicultural prescriptions associated with the selected alternative for the Barnyard South Sheep timber sale. The required disclosures mandated by NFMA shown below were not included in the draft.

The objector requested the Responsible Official to include the following information in the final EA:

- provide data and text demonstrating that soil, slope, or other watershed conditions will not be irreversibly damaged,
- provide data, text and maps demonstrating that protection is provided for streams, stream-banks, lakes, wetlands, and other bodies of water from detrimental changes in water temperatures, blockages of water courses, and deposits of sediment,
- provide data and maps demonstrating that cut blocks, patches, or strips are shaped and blended to the extent practicable with the natural terrain, and
- provide data and text demonstrating that seedtree and shelterwood silvicultural prescriptions are appropriate to meet the objectives and requirements of the relevant land management plan.

This wasn't done.

Thus, the final EA that violates NFMA Section 6 (E)(i) and (iii) as well as NFMA Section 6 (F)(i).

This objection point discussion begins on page 22 of the objector's comment letter.

How this objection point can be resolved: Rewrite the EA to include the information for seedtree and shelterwood required by NFMA shown above.

Objection Point #4---The Responsible Official does not describe the effects to Air Quality, Old Growth Habitat, Heritage Resources, Scenic Quality, Snag Habitat, Noxious Weeds, and Threatened and Endangered Species of Fish/Plants in chapter 3 in the final EA in spite of the fact that Air Quality, Old Growth Habitat, Heritage Resources, Scenic Quality, Snag Habitat, Noxious Weeds, and Threatened and Endangered Species of Fish/Plants will be affected (either positively or negatively) when this project is implemented.

The objector requested the Responsible Official to include a discussion, information and data in Chapter 3 of the final EA showing the effects to Air Quality, Old Growth Habitat, Heritage Resources, Scenic Quality, Snag Habitat, Noxious Weeds, and Threatened and Endangered Species of Fish/Plants that will result from logging and road

Link to Complete Report: http://www.fs.fed.us/rm/pubs/rmrs_gtr095.pdf

This wasn't done.

This objection point discussion begins on page 24 of the objector's comment letter.

[illegible]

This wasn't done.

The final EA violates 36 CFR 200.6 because the Responsible Official did not make her responses to public comments available to the objector for “inspection and copying.”

This also violates 40 CFR 1503.4(a) because the objector does not know how the Responsible Official responded to the objector's comments.

This objection point discussion begins on page 25 of the objector's comment letter.

How this objection point can be resolved: Rewrite the EA to include a link to an electronic version of the comment responses contained in the project file, or include an appendix to the modified EA that includes the Responsible Official's response to public comments. For each of the objector's comments the Responsible Official will disclose which of the 5 comment options in 40 CFR 1503.4(a) were used.

Objection Point #7---The Responsible Official's goal to eliminate natural disturbance events from the project area will impair and damage the proper functioning of the species that depend on these events occurring.

Remove **all** text from the NEPA document that infers action should be taken as part of the Barnyard timber sale to reduce the occurrence of natural disturbance events (fire, insect activity, disease etc.), or include a detailed description of how natural disturbance events benefit natural resources and define the resources that benefit.

Also, include **Attachments #1, #5, #8 and #14** as an Appendix to the final EA.

This wasn't done.

The Responsible Official offers no credible science indicating why a natural disturbance event that won't harm humans should be eliminated. This objector presented quotes by several hundred Ph.D. scientists who work in the forest ecology fields in **Opposing Views Attachments #5, #8, #14 and #9a**. These scientists all emphasize humans should stay away and allow these natural disturbance events to run their course to benefit the ecosystem. These scientists stress logging is the last treatment to be considered. Therefore, the final EA violates 40 CFR 1500.1(c), 40 CFR 1500.1(c) and 40 CFR 1500.2(f) because the proposed logging will not protect, restore, and enhance the quality of the human environment.

This objection point discussion begins on page 29 of the objector's comment letter.

How this objection point can be resolved: Rewrite the EA to remove all text from the EA that infers action should be taken as part of the Barnyard South Sheep project to reduce the occurrence of natural disturbance events (fire, insect activity, disease etc.).

[illegible]

Disclose the herbicides that will be applied and cite (and include in the References section) recent research conducted by unbiased, independent scientists not connected with the USDA that shows the herbicides that will be applied are not toxic.

Indicating herbicide will not be applied and noxious weeds will be addressed using mechanical and biological means in spite of the higher cost.

Therefore, the final EA violates 40 CFR 1501.2 (b), 40 CFR 1502.16(a) and (b), 40 CFR 1502.16 and 40 CFR 1508.8(b) because Chapter 3 omits important environmental effect disclosures. Keep in mind 40 CFR 1508.3 defines “Affecting” to mean the action “will or may (emphasis added) have an effect on” the human environment. An adverse effect need not be certain to qualify for Chapter 3 disclosures. Also 40 CFR 1508.8(b) defines effects as being ecological and “aesthetic, historic, cultural, economic, social, or health.” Since herbicides containing glyphosate clearly will or may , adversely affect health, these possible effects on health must be discussed in Chapter 3. Unfortunately, the Responsible Official chose to omit this discussion.

The draft FONSI violates 40 CFR §1508.27(b)(2) because the intensity discussion fails to discuss the degree to which the proposed action affects public health or safety. The selected alternative will apply herbicides containing glyphosate. Recent research conclusions by many independent scientists link glyphosate exposure to the following health issues. Some are potentially lethal.

3) The National Environmental Policy Act. NEPA states that all Federal agencies "to the fullest extent possible" must provide a detailed environmental impact statement (EIS) (42 U.S.C. 4332). Neither Congress nor the courts have indicated precisely how much detail an EIS must contain. However, courts consistently have held that, at a minimum, NEPA imposes a duty on Federal agencies to take a "hard look at environmental consequences" (*Natural Resources Defense Council v. Morton*, 458 F.2d 827, 838 (D.C. Cir., 1972)).

This objection point discussion begins on page 38 of the objector's comment letter.

How this objection point can be resolved: Rewrite the EA to include a discussion of climate change in the final NEPA document showing:

- 1) how the Strychnine Pine timber sale will affect climate change, and
 - 2) how climate change will affect the resources analyzed in Chapter 3.
- a climate change analysis.

Objection Point #10---The Responsible Official does not indicate that temporary roads will be obliterated after use which requires the sideslopes to be brought back to the natural angle of repose such that there will be no recognizable running surface. Temporary roads that are not obliterated become long-term linear sediment sources.

The objector requested the Responsible Official to:

- Obliterate all temporary roads after use and tell the public this will be done in the rewritten EA and highlight the choice to obliterate temporary roads on the DN.
- Assure that the rewritten EA defines an obliterated road correctly: 1) it contains no running surface, 2) the CMPs have been removed, and 3) the natural sideslope that existed before the road was constructed is reestablished by placing the fill back in the cut.
- Assure the rewritten EA describes a road obliteration monitoring plan to assure the sediment is being reduced as expected. The DN should indicate the USFS will provide funding for the monitoring and accomplish the monitoring.

This wasn't done.

The Responsible Official proposes to decommission temporary roads. This violates 36 CFR 212.5(b)(2) because decommissioning a road that will never be needed again does not restore the road to a more natural state. If the road will be used in the future it's not a "temporary" road and should have been constructed to system road standards.

The objector's comments on the draft included 1) USFS literature describing the need for such monitoring, and 2) science describing the superiority of decommissioning clearly showing why the extra cost of obliteration eliminates the need to spend more money in the future trying to eliminate sediment. Clearly, the objector's referenced

showed the Responsible Official that obliteration eliminates chronic sediment delivery, restores hillslope hydrology, and reduces impacts to aquatic, riparian, and terrestrial ecosystems of roads crossings.

Therefore, the final EA violates:

- 40 CFR 1500.1(c) because the ineffective proposal to decommission temporary roads after use will not “protect, restore, and enhance the environment.”
- 40 CFR 1500.2(f) because the ineffective proposal to decommission temporary roads after use will not “restore and enhance the quality of the human environment and avoid or minimize any possible adverse effects of their actions upon the quality of the human environment.”
- 40 CFR 1500.2(e) because the ineffective proposal to decommission temporary roads after use will not “avoid or minimize adverse effects of these actions upon the quality of the human environment.”

The Responsible Official proposes to decommission temporary roads. This violates 36 CFR 212.5(b)(2) because decommissioning a road does not restore the road to a more natural state.

Decommissioning a road does not “reestablishing former drainage patterns, stabilizing slopes, restoring vegetation, blocking the entrance to the road, installing water bars, removing culverts, reestablishing drainage-ways, removing unstable fills, pulling back road shoulders, scattering slash on the roadbed, completely eliminating the roadbed by restoring natural contours and slopes.” 36 CFR 212.5(b)(2) states that decommissioning actions must include “but are not limited to” the actions listed above.

This objection point discussion begins on page 39 of the objector’s comment letter.

How this objection point can be resolved: Rewrite the EA to:

- 1) indicate all temporary roads will be obliterated after use,
- 2) describe obliteration showing the natural sideslope that existed before the road was constructed is reestablished by placing the fill back in the cut,
- 3) include a road obliteration monitoring plan to assure the sediment is being reduced as expected.

The DN should indicate the USFS will provide funding for the monitoring and accomplish the monitoring.

The objector attached multiple **Opposing Viewpoint Attachments** to his comments on the pre-decisional EA. The attachments presented “responsible” opposing viewpoint quotes authored by between 500 and 600 Ph.D. scientists. These viewpoints contradict the majority of the projects benefits expressed by the Responsible Official in the pre-decisional EA. The source literature for these scientific quotes is contained in the attachments. None of the literature was contained in the References section of the Barnyard pre-decisional EA.

This wasn't done.

- 40 CFR 1500.2(b) because the USFS could not complete the necessary environmental analyses without all the effects evidence,
- 40 CFR 1501.2(a) because the USFS did not identify environmental effects in adequate detail to complete a technical analyses of the project.
- 40 CFR 1500.2(e) because the Responsible Official was unable to avoid or minimize adverse effects of the project upon the quality of the human environment without complete knowledge of all likely adverse effects. Some adverse effects of project activities described by scientists in the **Attachments** was not mentioned in the final EA.
- 40 CFR 1500.2(f) because the Responsible Official was unable to avoid or minimize any possible adverse effects upon the quality of the human environment without knowledge of the adverse effects. Had the Responsible Official known about these effects she would have acknowledged the existence of some adverse effects described in the **Attachments** in the final EA.

Rejecting valid science because it s at odds with USFS timber agenda is also inconsistent with court precedent:

Sierra Club v. Eubanks 335 F. Supp. 2d 1070 (ED Cal. 2004)

Opinion excerpt:

"credible scientific evidence that [contradicts] a proposed action must also be evaluated and considered."

Seattle Audubon Society v. Lyons 871 F. Supp. 1291, 1318 (W.D. Wash. 1994)

Opinion excerpt:

"[the EIS] must also disclose responsible scientific opinion in opposition to the proposed action, and make a good faith, reasoned response to it."

Seattle Audubon Society v. Moseley 798 F. Supp. 1473 (WD Wash. 1992)

Opinion excerpt:

"[t]he agency's explanation is insufficient under NEPA ... not because experts disagree, but because the FEIS lacks reasoned discussion of major scientific objections."

***Sierra Club v. Bosworth*, 199 F.Supp.2d 971, 980 (N.D. Cal. 2002)**

Opinion excerpt:

The forest service failed to "disclose and analyze scientific opinion in support of and in opposition to the conclusion that the...project will reduce the intensity of future wildfires in the project area."

If a District Court judge were ruling on this objection issue, they would surely follow court precedent.

This objection point discussion begins on page 43 of the objector's comment letter.

How this objection point can be resolved: Include some source documents from the **Opposing Views Attachments** in the References section of the final EA. Also include discussions of the possible adverse effects to natural resources in and downstream from the project by including the text of a reasonable number of opposing views quotes that appear in the **Opposing Views Attachments** in an Appendix to the final EA. The scientific quotes contained in the **Opposing Views Attachments** should be highlighted in the Appendix and cited where appropriate in the body of the final EA.

Objection Point #12---The vast majority of scientific logging-related effects literature is authored by independent scientists not affiliated with the USDA.

These independent scientists describe how logging activities will damage and impair the proper functioning of numerous natural resources. The objector presented multiple opposing view attachments with his comments containing statements describing logging-related natural resource damage. Each scientific statement includes the link to the source document that contains the statement. The References section of the final EA contains references written by an inappropriately large percentage of USDA employees. The references section excludes science literature authored by independent scientists that detailed how logging activities similar to that proposed by this project might cause natural resource damaging.

Professional scientists do not selectively choose literature citations that will support their case and systematically exclude those that don't.

The objector requested the Responsible Official to include some source documents from the **Opposing Views Attachments** in the References section of the final EA. He also asked the Responsible Official to cite the specific quotes presented for the source literature in the text of the EA that were chosen to include in the References.

Finally, the objector requested the Responsible Official to Include links to each **Opposing Views Attachments** that were choose to be included in the Reference section.

This wasn't done.

Therefore, the final EA violates:

- 40 CFR 1500.1(b) because important environmental information was not made available to citizens before the decision was made.
- 40 CFR 1500.1(c) because the public was denied the opportunity to understand the adverse environmental consequences of the logging treatment.
- 40 CFR 1500.2(e) because the Responsible Official was unable to avoid or minimize adverse effects of the project upon the quality of the human environment without complete knowledge of all likely adverse effects. Some adverse effects of project activities described by scientists in the **Attachments** was not mentioned in the final EA.
- 40 CFR 1500.2(f) because the Responsible Official was unable to avoid or minimize any possible adverse effects upon the quality of the human environment without knowledge of the adverse effects. Had the Responsible Official known about these effects she would have acknowledged the existence of some adverse effects described in the **Attachments** in the final EA.

This objection point discussion begins on page 44 of the objector's comment letter.

This objection point discussion begins on page 45 of the objector's comment letter.

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Objection Point #14---This objector asked the Responsible Official to analyze an alternative in detail that constructed no new roads (system or temporary).

The objector requested the Responsible Official to analyze a “no new roads” alternative in detail.

The objector pointed out to the Responsible Official that a no new roads alternative will likely reduce the sale volume some, but it meets the Purpose and Need because the P&N contains no specific volume figure that must be produced. This new alternative stands out among the possible action alternatives that could be analyzed in detail because it reduces the adverse environmental effects of logging while still meeting the purpose and need for the project.

In spite of this explanation, the Responsible Official did not act on the objector's request and gave invalid, unbelievable reasons explaining why complying with this objectors request will be impossible.

The EA has violated the public trust in the agency. USFS employees work for the American citizens. The EA has also violated 40 CFR §1500.2 Policy because the Responsible Official refused to honor this member of the public's request to analyze what is clearly a reasonable alternative to the Proposed Action in detail. A no new roads alternative is "reasonable" and "avoids or minimizes adverse effects" of road construction "upon the quality of the human environment."

This objection point discussion begins on page 46 of the objector's comment letter.

How this objection point can be resolved: Analyze a no new roads alternative in detail and display the results in the final EA.

I appreciate the fact that the US Forest Service adopted the BLM's Objection Process. Indeed, the Administrative Appeals process wasn't working. Some members of the public set traps for well meaning USFS officials. They did this by not airing their concerns in their 30-day and 45-day comments. Then they appealed on those same issues after the decision had been made.

The Objection Process allows the public to identify their concerns and alleged violations of law in the draft NEPA document which gives the Responsible Official an opportunity to address the issue in the final NEPA document before the decision is finalized.

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